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5
6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA

8 DAVID ANTHONY AVILA; JOHN
HAYNE,

9 Plaintiff,

10 v.

11 NEWREZ LLC d/b/s SHELLPOINT
MORTGAGE SERVICING; JP MORGAN
12 MORTGAGE ACQUISITION
CORPORATION; PEAK
FORECLOSURE SERVICES INC.,

13 Defendant.

No. 2:24-cv-02264-TLN-CSK

Motion No. PPR-*

**NOTICE OF MOTION TO VACATE
DEFAULT AND DEFAULT JUDGMENT
PURSUANT TO FRCP 55(c)**

Hearing –

Date : 02/06/2025

Time : 02:00 PM

14 **Place :** Robert T. Matsui United States Courthouse
15 501 I Street
Sacramento, CA 95814

16 Courtroom 2, 15th floor

17 **Judge:** Chief District Judge Troy L. Nunley

18 Defendants, NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, et al.,
19 (“Defendants” hereinafter) for its Motion to Vacate Default, state as follows:
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21

1 **1. INTRODUCTION.**

2 Defendants Motion to Vacate Default is based upon Federal Rule of Civil Procedure 55(c),
3 and 60, which provides that a default may be set aside based upon “Good Cause”. Plaintiff’s
4 alleged Service of Process is defective on its face and therefore, the merits, and therefore, does not
5 support a valid entry of Default against Defendants.

6 **2. FACTS.**

7 The Court entered Default against Defendants on **December 2, 2024** based upon a
8 Defective Proof of Service filed by Plaintiff stating alleged service upon “PEAK FORECLOSURE
9 SERVICES INC.” on “9/13/2024”; such 9/13/2024 Proof of Service however, fails to specify
10 Service of Process on any “*authorized agent*”, nor specifying any “*name or relationship to the*
11 *party named in Item 3a*”, **attached as Exhibit “A”**. Therefore, Plaintiff’s Proof of Service is
12 Defective on its face, and constitutes a substantial Due Process prejudicial irregularity, for which
13 the Court’s 12/2/2024 Default must be set aside, and vacated.

14 Defendant’s Motion is based upon the grounds that the Defendant was not properly served.
15 Defendant’s Proof of Service, and Defendant’s Declaration in Support, will be submitted
16 henceforth.

17 **3. CONCLUSION.**

18 WHEREFORE, Defendants respectfully seek to Vacate the 12/2/2024 Default for Good
19 Cause pursuant to Federal Rule of Civil Procedure 55(c), and 60, so that it may properly defend
20 this proceeding under the Federal Rules of Civil Procedure. Simply, Defendants were never
21 properly served with Plaintiff’s alleged Motion.

Dated: December 31, 2024

PROBER & RAPHAEL, A LAW CORPORATION

/s/ CHRISTINA FLAVIN

CHRISTINA FLAVIN

Attorney for Plaintiff

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, Bar number, and address): Fatherly Freedom Inc PO BOX 60 Twain Harte, CA 95383 TELEPHONE NO.: 209-591-0466 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): DAVID AVILA, ET AL	FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; margin: 10px 0;">FILED</div> <div style="font-size: 1.2em; font-weight: bold; margin: 10px 0;">SEP 23 2024</div> CLERK, U.S. DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA BY <u>mm</u> DEPUTY CLERK
United States District Court, Eastern District of California STREET ADDRESS: 501 I St. Suite 4-200 MAILING ADDRESS: 501 I St. Suite 4-200 CITY AND ZIP CODE: Sacramento 95814 BRANCH NAME: Robert T. Matsui Federal Courthouse	CASE NUMBER: <div style="font-weight: bold; font-size: 1.1em;">2:24-CN-2264-TLN-CSK</div>
PLAINTIFF/PETITIONER: DAVID AVILA, ET AL DEFENDANT/RESPONDENT: NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING, ET AL	Ref. No. or File No.: <div style="font-weight: bold; font-size: 1.1em;">2:24-CN-2264-TLN-CSK</div>
PROOF OF SERVICE OF SUMMONS	

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of (specify documents):
VERIFIED CLAIM FOR DAMAGES; Complaint; Summons
3. a. Party served (specify name of party as shown on documents served):
Peak Foreclosure Services, Inc.
- b. ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b whom substituted service was made) (specify name and relationship to the party named in item 3a):
4. Address where the party was served:
5900 Canoga Avenue, Suite 220, Woodland Hills, CA 91367
5. I served the party (check proper box)
- a. ☒ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): **09/13/2024** at (time): **3:34 PM**
- b. ☐ **by substituted service.** On (date): _____ at (time): _____ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
- (1) ☐ **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
- (2) ☐ **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
- (3) ☐ **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
- (4) ☐ I thereafter caused to be mailed (by first class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc § 415.20). Documents were mailed on (date): _____ from (city): _____ or ☐ a declaration of mailing is attached.
- (5) ☐ I attach a **declaration of diligence** stating actions taken first to attempt personal service.

BY FAX



PLAINTIFF/RESPONDENT: DAVID D. VATA ET AL
 DEFENDANT/RESPONDENT: NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING, ET AL

CASE NUMBER:
 2:24-CN-2264-TLN-CSK

- c. ☐ by mail and acknowledgement of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgement of Receipt* and a postage-paid return envelope addressed to me. (Attach completed *Notice and Acknowledgement of Receipt*.) (Code Civ. Proc., § 415.30)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40)
- d. ☐ by other means (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☒ On behalf of (specify) **Peak Foreclosure Services, Inc.**
 under the following Code of Civil Procedure section:

- | | |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. Person who served papers

- a. Name: **Christopher Michael Padgett**
- b. Address: **15632 mayall street, north hills, CA 91343**
- c. Telephone number: **818-966-7120**
- d. The fee for service was: **\$ 105.00**
- e. I am:

- (1) ☐ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).

- (3) ☒ registered California process server:

(i) ☐ owner ☐ employee ☒ independent contractor.

For: **ABC Legal Services, LLC**

(ii) ☒ Registration No.: **2021162522**

Registration #: **6779**

(iii) ☒ County: **County of Los angeles**

County: **Los Angeles**

BY FAX



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8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 09/13/2024

Christopher Michael Padgett

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



(SIGNATURE)

